

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff-Respondent,	§	
	§	
v.	§	Cr. No. C-05-643 (2)
	§	C.A. No. C-08-77
MIGUEL RUIZ, JR.,	§	
	§	
Defendant-Movant.	§	

**ORDER DENYING IN PART AS MOOT  
AND GRANTING IN PART MOTION TO  
PROCEED ON APPEAL *IN FORMA PAUPERIS***

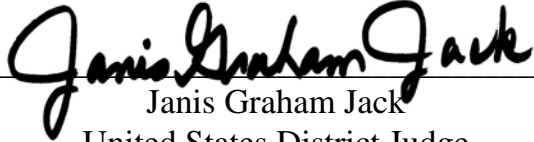
Miguel Ruiz, Jr. has appealed from this Court’s denial of his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. A family member paid his appellate filing fee approximately one month after Ruiz filed his Notice of Appeal. (See February 19, 2009 docket entry referencing payment of filing fee by Blanca Ruiz Garza.) Despite this, the Fifth Circuit dismissed his appeal for want of prosecution based on his alleged failure to pay the docketing fee on June 2, 2009. (D.E. 167.) Ruiz apparently filed a “motion to reconsider judgment and recall mandate,” which the Fifth Circuit construed as a motion to reinstate his appeal and granted on August 4, 2009. (D.E. 169.) On the same date, the Clerk received from Ruiz his motion to proceed on appeal *in forma pauperis*, which is pending before the Court and addressed herein. (D.E. 170.)

As previously noted by the Court, the appellate filing fee in this case has already been paid by a family member. Thus, there is no need for *ifp* status as to the filing fee. Insofar as Ruiz seeks *ifp* status for purposes of the filing fee, then, his motion is DENIED IS MOOT. To the extent Ruiz seeks *ifp* status for purposes of other expenses on appeal, such as any transcripts that must be

ordered, the Court GRANTS his motion. His *ifp* affidavit and the information provided by the prison official at his place of incarceration reflect that he has a balance in his account of \$35.99 and that his average monthly balance in the six months preceding his application was \$44.22. He has no other assets and no income, other than occasional gifts from family members in small amounts. Based on this information, the Court finds that he is entitled to proceed on appeal *in forma pauperis* for purposes other than the filing fee, which has already been paid.

For the foregoing reasons, Ruiz's motion to proceed on appeal *in forma pauperis* (D.E. 170) is DENIED AS MOOT IN PART (as to the filing fee) and GRANTED IN PART.

It is so ORDERED this 14th day of August, 2009.

  
Janis Graham Jack  
United States District Judge